

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

May 5, 2011 Hearing

Agenda Item 3

SUBJECT: Via Lido Amendments - (PA2011-024)
3363, 3369 & 3377 Via Lido and 3378 Via Oporto

- General Plan Amendment No. GP2011-003
- Local Coastal Plan Amendment No. LC2011-002
- Code Amendment No. CA2011-005

APPLICANT: Allan Fainbarg

PLANNER: Rosalinh Ung, Associate Planner
(949) 644-3208, rung@newportbeachca.gov

PROJECT SUMMARY

The property owner is seeking to continue the existing nonconforming commercial uses of the subject property by requesting the following amendments:

- 1) General Plan Land Use designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V),
- 2) Coastal Land Use Plan designation from Multiple-Unit Residential (RM-D) to Mixed-Use Vertical (MU-V), and
- 3) Zoning designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).

No new land use or development is proposed at this time.

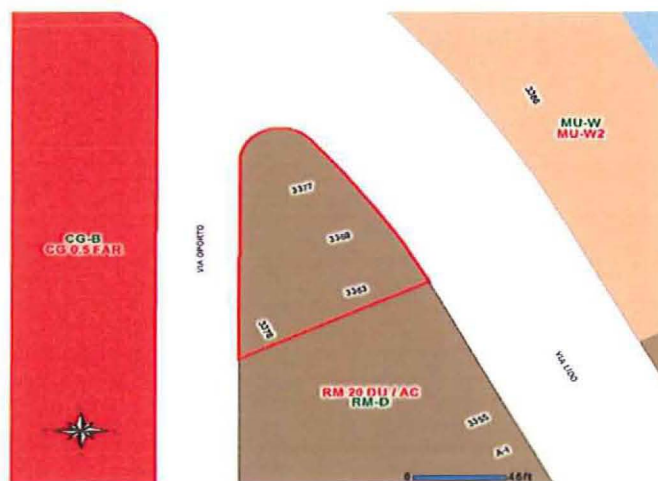
RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) and attached Exhibits recommending the City Council:
 - Approve General Plan Amendment No. GP2011-003,
 - Approve Local Coastal Plan Amendment No. LC2011-002, and
 - Approve Code Amendment No. CA2011-005

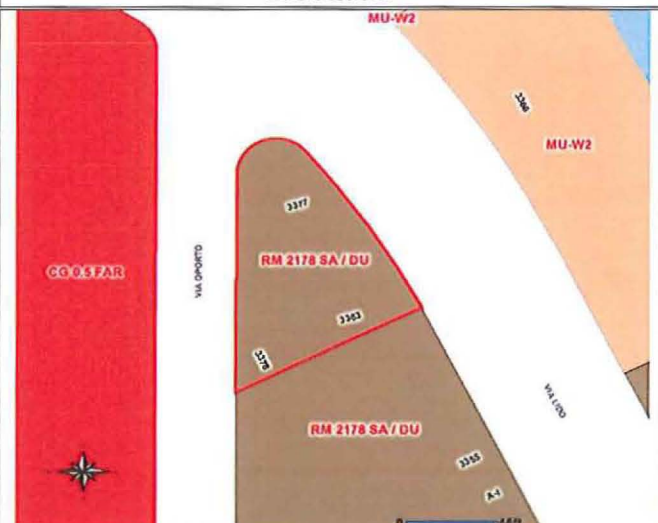
VICINITY MAP



GENERAL PLAN & COASTAL LAND USE



ZONING



LOCATION	EXISTING GENERAL PLAN & COASTAL LAND USE	EXISTING ZONING	CURRENT USE
ON-SITE	RM/20 DU/AC & RM-D	RM 2178 SA/DU	Retail Commercial & Office Uses
NORTH	MU-W	MU-W2	Retail Commercial & Office Uses
SOUTH	RM/20 DU/AC & RM-D	RM 2178 SA/DU	Retail Commercial & Office Uses
EAST	MU-W	MU-W2	Office & Residential Uses
WEST	CG 0.5 FAR & CG-B	CG 0.5 FAR	Retail Commercial Uses

INTRODUCTION

Project Setting

The subject property is an approximately 8,106 square feet in size and located on the inland side of Via Lido in Lido Marina Village area. It has land use designation of RM (Multiple-Unit Residential) by the General Plan Land Use Element, Coastal Land Use Plan and the Zoning Code. The property is currently improved with two, single-story commercial buildings that are being occupied by a beauty salon, a day spa, and two office developments.

Background

The subject property was originally developed with commercial and office developments in 1970. The Zoning designation was C-1 (Light Commercial), according to the City's building records.

On March 10, 1983, the Planning Commission approved Use Permit No. 3024 to allow the establishment of a take-out ice cream shop to be located in the smaller building facing Via Oporto (3378 Via Oporto). The subject property, at that time, has a zoning designation of C-O (Limited Commercial).

On November 9, 1992, the City Council adopted Ordinance 92-45 to reclassify specific parcels City-wide including the subject property, from C-O (Limited Commercial) to RSC (Retail & Service Commercial), in order to be consistent with the 1988 Comprehensive General Plan Revision.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"). As a part of this update, the General Plan designation of the subject property was changed from RSC to RM (Multiple Residential) 20 DU/AC.

On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update. As a part of this Coastal Land Use Amendment, the Coastal Land Use designation of the subject property was changed from CG-B (General Commercial) 0.75 FAR to RM-D (Multiple Residential) 20-29.9 DU/AC.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. The nonconformity determination; however, could not be made until the finalization of the City's Local Coastal Plan (LCP) which occurred on July 14, 2009.

On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The Zoning designation of the subject property was changed from RSC (Retail & Service Commercial) to RM (Multiple Residential) 2178 square feet per dwelling unit (20 units per acre). The result of this action rendered the existing commercial uses located on subject property nonconforming, making them subject to abatement.

The City sent letters to all known uses that are subject to abatement. Subsequently, staff has met and continues to meet with many of the owners of property that are subject to abatement to discuss the land use options that are available to address their individual situations. These options include the conversion of existing uses to residential uses (apartment, townhouse, etc); request for extension of the abatement period; and/or request to amend the General Plan, Coastal Land Use Plan and Zoning Code to allow the continuation of the existing commercial uses. In the case of the subject application, the property owner chooses to pursue amendments to change the land use designations of their property from residential to mixed-use.

Project Description

The subject application does not include a specific project for development at this time. The proposed land use changes, as shown below, would allow the retention of the existing land use and allow for future development in accordance with the standards of the proposed zoning district.

	Existing	Proposed
General Plan	Multiple-Unit Residential (RM) 20 DU/AC	Mixed-Use Vertical (MU-V)
Coastal Land Use Plan	Multiple-Unit Residential (RM-D) 20.0-29.9 DU/AC	Mixed-Use Vertical (MU-V)
Zoning District	Multiple-Unit Residential (RM) 2178 S.F./DU	Mixed-Use Vertical (MU-V)

DISCUSSION

Analysis

Amendments to the General Plan Land Use Plan, Coastal Land Use Plan and Zoning Code are legislative acts. Neither City nor State Planning Law sets forth required findings for approval or denial of such amendments. However, when making a recommendation to the City Council, the Planning Commission should consider applicable policies and development standards to ensure internal consistency.

General Plan

The applicant requests to amend the General Plan to change the subject property from a multiple-unit residential to a mixed-use land use designation. The MU-V designation is intended to provide for the development of properties for mixed-use structures that vertically integrate housing with retail uses including retail, office, restaurant, and similar nonresidential uses. MU-V designated sites also may be developed exclusively for retail or offices in accordance with the CN, CC, CG, or CO-G designations.

Mixed-Use Buildings: floor area to land ratio of 1.50; where a minimum floor area to land ratio of 0.35 and maximum of 0.5 shall be used for nonresidential purposes and maximum of 1.00 for residential.

Nonresidential Buildings: floor area to land area ratio of 0.75.

In considering the proposed General Plan Amendment, the Planning Commission should consider the following Land Use Element policies:

Policy LU 3.2 - Growth and Change states as follows:

Enhance existing neighborhoods, districts, and corridors, allowing for re-use and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.

Policy LU 3.2 is intended to provide direction to decision-makers in determining under what circumstances changes in land use, density, or intensity should be considered. This policy recognizes that there are some areas of the City that are not achieving their full potential and the policy establishes strategies for their enhancement and revitalization. The proposed amendment would not create unacceptable or significant traffic impacts or impacts to existing infrastructure or public services given the relatively small size of the lot and MU-V Development Standards. The continuation of existing uses is consistent with the uses allowed under the proposed mixed-use designation. The development of vertically integrated mixed-use buildings will be compatible with the future development planned for Lido Marina Village and nearby properties.

LU Policy 3.3 - Opportunities for Change states in part as follows:

Land Use Policy LU 3.3 is intended to advance Goal LU 3, to provide: "Opportunities for Change - Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors...Balboa Peninsula: more efficient patterns of use that consolidate the Peninsula's visitor-serving and mixed uses within the core commercial districts; encourage marine-related uses especially along the bay front; integrate residential with retail and visitor-serving uses in Lido Marina Village, McFadden Square, Balboa Village, and along portions of the Harbor frontage; re-use interior parcels in Cannery Village for residential and limited mixed-use and live/work buildings; and redevelop underperforming properties outside of the core commercial districts along the Balboa Boulevard corridor for residential. Infill development shall be designed and sited to preserve the historical and architectural fabric of these districts."

The subject site is located at the Lido Marina Village's southern edge where specialty retail uses, restaurants, office uses, the City Hall and churches are in existence. This area has experienced a high number of building vacancies and many retail/office developments that are underperforming. The subject site is improved with two, single-story commercial buildings and currently occupied by a beauty salon, a day spa, real estate office and a consulting office. Staff believes the proposed project can be found consistent with this policy as the proposed amendments would allow the existing office/commercial uses to remain and provide future opportunity for residential development to be developed above retail and office uses.

LU Policy 6.9.1 – Priority Uses

Encourage uses that take advantages of Lido Village's location at the Harbor's turning basin and its vitality and pedestrian character, including visitor-serving and retail commercial, small lodging facilities (bed and breakfasts, inns), and mixed-use buildings that integrate residential with retail uses [areas designated as "MU-W2", Subarea "A"]. A portion of the Harbor frontage and interior parcels (Subarea "B") may also contain multi-family residential [designated as "RM (20DU/AC)"], and the parcel adjoining the Lido Isle Bridge a recreational and marine commercial use [designated as "CM (0.3)"]

Staff believes the proposed project can be found consistent with this policy as the proposed amendments would allow the existing office/commercial uses to remain and provide future opportunity for residential development to be developed above retail and office uses at the subject site would be complementary to the nearby MU-W2 designated properties.

Coastal Land Use Plan

The subject property is located in the coastal zone and therefore, is subject to the applicable goals, objective and policies of the Coastal Land Use Plan. This Plan is created to govern the use of land and water in the coastal zone within the City of Newport Beach and is in accordance with the California Coastal Act of 1976. The subject property has a land use designation of Multiple-Unit Residential (RM-D) 20.0-29.9 DU/AC. The applicant is requesting to change the current land use to a mixed-use designation. The subject property does not contain any sensitive coastal resources as it is presently improved with commercial buildings nor located where public access easements would be required. The Coastal Act prioritizes land uses, and visitor-serving uses are a higher priority land use than residential use. The continuation of commercial uses and future redevelopment on the subject property as permitted in the MU-V designation will not conflict with the policies of the Coastal Act.

Zoning Code

The MU-V Zoning District is intended to provide for areas appropriate for the development of mixed-use structures that vertically integrate residential dwelling units above the ground floor with retail uses including office, restaurant, retail, and similar nonresidential uses located on the ground floor or above.

The stated purpose and intent of the Zoning Code is to carry out the policies of the City of Newport Beach General Plan. Consistency between the General Plan and zoning designation is critical to ensure orderly development and enforcement. With regard to the subject property, existing commercial and office developments would not strictly conform to all standards of the proposed MU-V Zoning District; however, continued commercial use would be allowed without abatement. The subject property would be subject to Chapter 20.38 (Nonconforming Uses and Structures) and new development would require conformance with applicable development and parking standards.

Under the existing RM (20 DU/AC) designation, the subject property could be developed with a maximum of three (3) residential dwelling units. A total of seven (7) parking spaces would be required.

The main purpose of the requested amendment is to maintain the existing commercial uses at the subject property. The applicant also desires, in the future, to have the opportunity to develop residential use above the commercial development.

The charts below demonstrate how the subject property of 8,106 square feet in size could be developed under the minimum and maximum intensity allowance for MU-V zoning designation. For simplicity, it is assumed that parking for the commercial development is a retail use, with the parking requirement of one space for every 250 square feet of gross floor area.

Proposed MU-V designation:

Mixed Use (1.5 FAR)				Parking	
		Min	Max	Min	Max
	Non-Res	2,837 sf (.35 FAR)	4,053 sf (.50 FAR)	12 (1/250)	17 (1/250)
	Res	3 (20/DU/AC)	4 (1.00 FAR)	7(6+1 guest)	10 (8+2 guest)
Total		2,837 sf. + 3 DU	4,053 sf. + 4 DU	19	27

Commercial Only (.75 FAR)		Parking
Total		6,080 sf. (.75 FAR)
		25 (1/250)

As demonstrated, under the minimum mixed-use intensity allowance the subject property could be developed with 2,837 square feet of retail commercial development and three (3) residential dwelling units. Under this scenario, some if not all of the 19 required parking spaces would be off-site, unless a parking waiver could be granted due to the small size of the lot. The maximum mixed-use intensity; however, may not be feasible due to site constraints (i.e., size and location of the property and development standards, including parking, height limits, etc.).

Charter Section 423 (Measure S) Analysis

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed general plan amendment (if approved) requires a vote by the electorate. The proposed amendments are combined with 80% of the increases in traffic, dwelling units and non-residential floor area created by previous general plan amendments (approved within the preceding 10 years) within the same statistical area. The following thresholds are applicable: 100 dwelling units, 100 a.m. peak hour trips, 100 p.m. peak hour trips, or 40,000 square feet of non-residential floor area. If any of the thresholds are exceeded with Council approval of the amendment, the amendment would be classified as a "major amendment" and be subject to voter consideration. Approved amendments, other than those approved by the electorate, are tracked for 10 years and factored into the analysis of future amendments as indicated.

Table 1, below, summarizes the changes created by the proposed amendment with the MU-V designation for the subject property, at the maximum allowable intensity. As indicated, in either case, none of the four thresholds would be exceeded, and therefore, a vote is not required. A more detailed analysis is attached (Attachment No. PC 2).

Table 1 Charter Section 423 Analysis Summary Statistical Area B1				
	Allowed Floor Area	A.M. Peak Hour Trips	P.M. Peak Hour Trips	Increase in Allowed Dwelling Units
Prior Amendment GP2010-005	12,083 (at 80%)	36.30 (at 80%)	48.40 (at 80%)	0
Proposed GP2011-003	4,053	12.67	16.83	1
TOTAL	16,136	48.97	65.23	1

SB18 Tribal Consultation Guidelines

Pursuant to Section 65352.3 of the California Government Code, a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that nine tribe contacts should be provided notice regarding the proposed project. The appropriate tribe contacts supplied by the NAHC were provided notice on February 28, 2011. Section 65352.3 of the California Government Code requires 90 days to allow tribe contacts to respond to the request to consult unless the tribe contacts mutually agree to a shorter time period. Staff has not received any responses although the review period remains open. The Planning Commission may recommend the proposed general plan amendment to City Council at this time. However, the City Council may not act on the proposed amendment until the tribe review period is concluded. Given the site is presently developed and that the no development is proposed at this time, staff does not anticipate any conflicts or need for monitoring by the tribes. If any comments are received from the tribes, they will be forwarded to the City Council for consideration.

Environmental Review

The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will bring the General Plan Land Use, Coastal Land Use, and Zoning District designations consistent with the present use of the subject property. The site is presently developed and no development is proposed at this time, however, future development of the existing property and structures would be categorically exempt under Section 15302 of the California Environmental Quality Act (CEQA) Guidelines – Class 2 (Replacement or Reconstruction).

Summary

The applicant has requested the amendments to allow retention of the existing commercial buildings and uses. These uses have been in existence for a very long time and their abatement at this time seems contrary to the General Plan Policies that promote revitalization of the area. Continuation of these uses and future development consistent with the MU-V designation doesn't appear to be in conflict with the General Plan or Coastal Land Use Plan or Coastal Act. Staff does not foresee any adverse environmental impacts with continued use or redevelopment of the property. The approval of the General Plan Amendment to MU-V designation would not necessitate a vote of the electorate, as required by Section 423 of the City Charter.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the properties, and was posted at the site a minimum of ten days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Rosalinh Ung, Associate Planner

Submitted by:


Gregg Ramirez, Senior Planner

ATTACHMENTS

PC 1 Draft Resolution with exhibits

PC 2 Section 423 Analysis Table

Attachment No. PC 1
Draft Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO THE CITY COUNCIL AMENDMENTS TO THE LAND USE ELEMENT OF THE GENERAL PLAN, COASTAL LAND USE PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MIXED-USE VERTICAL (MU-V) FOR PROPERTY LOCATED AT 3363, 3369 & 3377 VIA LIDO and 3378 VIA OPORTO (PA2011-024)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").
2. On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001 making the Coastal Land Use Plan consistent with the General Plan Update.
3. On January 28, 2008, the City Council adopted a new ordinance (Ordinance No. 2008-05) that established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
4. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The result of that action rendered numerous properties nonconforming, with existing commercial buildings and uses located within residential districts. In accordance with Ordinance No. 2008-05, mentioned above, those properties are subject to abatement.
5. An application was filed by Allan Fainburg with respect to property located at 3363, 3369 & 3377 Via Lido and 3378 Via Oporto, requesting approval for an amendment to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use designation from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
6. The subject property is currently located within the Multiple-Unit Residential (RM) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential Land Use (RM).

7. The change of the General Plan designations of the subject property is from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
8. The recommended change of the Zoning District designations of the subject property from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V).
9. The subject property is located within the coastal zone. The Coastal Land Use Plan category of the subject property is Multiple-Unit Residential Land Use designation (RM-D).
10. The recommended change to the Coastal Land Use designation is consistent with the recommended General Plan Amendment for the subject property from Multiple-Unit Residential (RM-D) to Mixed-Use Vertical (MU-V).
11. Council Policy A-18 requires that proposed General Plan amendment be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following three thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: the project generates more than 100 peak hour trips, adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area.
12. This is the second set of General Plan Amendments that affect Statistical Area B5 since the General Plan update in 2006. The proposed amendment including the previous amendment result in an increase of 48.97 a.m. peak hour trips and an increase 65.23 p.m. peak hour trips based on the commercial and residential housing trip rates reflected in Council Policy A-18; an increase of 16,136 square feet in non-residential floor area; and an increase of one dwelling unit. As none of the four thresholds that require a vote pursuant to Charter Section 423 are exceeded, no vote of the electorate is required.
13. A public hearing was held on May 5, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 2 (Replacement or Reconstruction).
2. The proposed amendments are exempt since they do not entail any significant alteration to the subject properties and are essentially bringing the General Plan Land

Use Designation, Coastal Land Use Designation and Zoning District to be consistent with the existing use of the buildings located on the subject property involved. Therefore, this activity is not subject to CEQA.

3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As the project applicant is the primary beneficiary of such approvals, it is appropriate that the applicant should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare.
3. The amendments of the Land Use Element of the General Plan and the Coastal Land Use Plan will provide consistency with the proposed code amendment to change the zoning of the subject property from Multiple-Unit Residential (RM) to Mixed-Use (MU-V) designation.
4. The existing buildings and uses, and future development of the subject property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan; and will be consistent with the purpose and intent of the MU-V zoning district of the Newport Beach Municipal Code.
5. The subject property is occupied by two, single-story commercial buildings and currently occupied by a beauty salon, a day spa, real estate office and a consulting office. The existing uses are permitted in the MU-V zoning district.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-003, Coastal Land Use Plan Amendment LC2011-002, and Zoning Code Amendment from Multiple-Unit Residential (RM) to Mixed-Use Vertical (MU-V), Statistical Area B5, Attachment Exhibit A.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF MAY, 2011.

AYES:

NOES:

ABSTAIN:

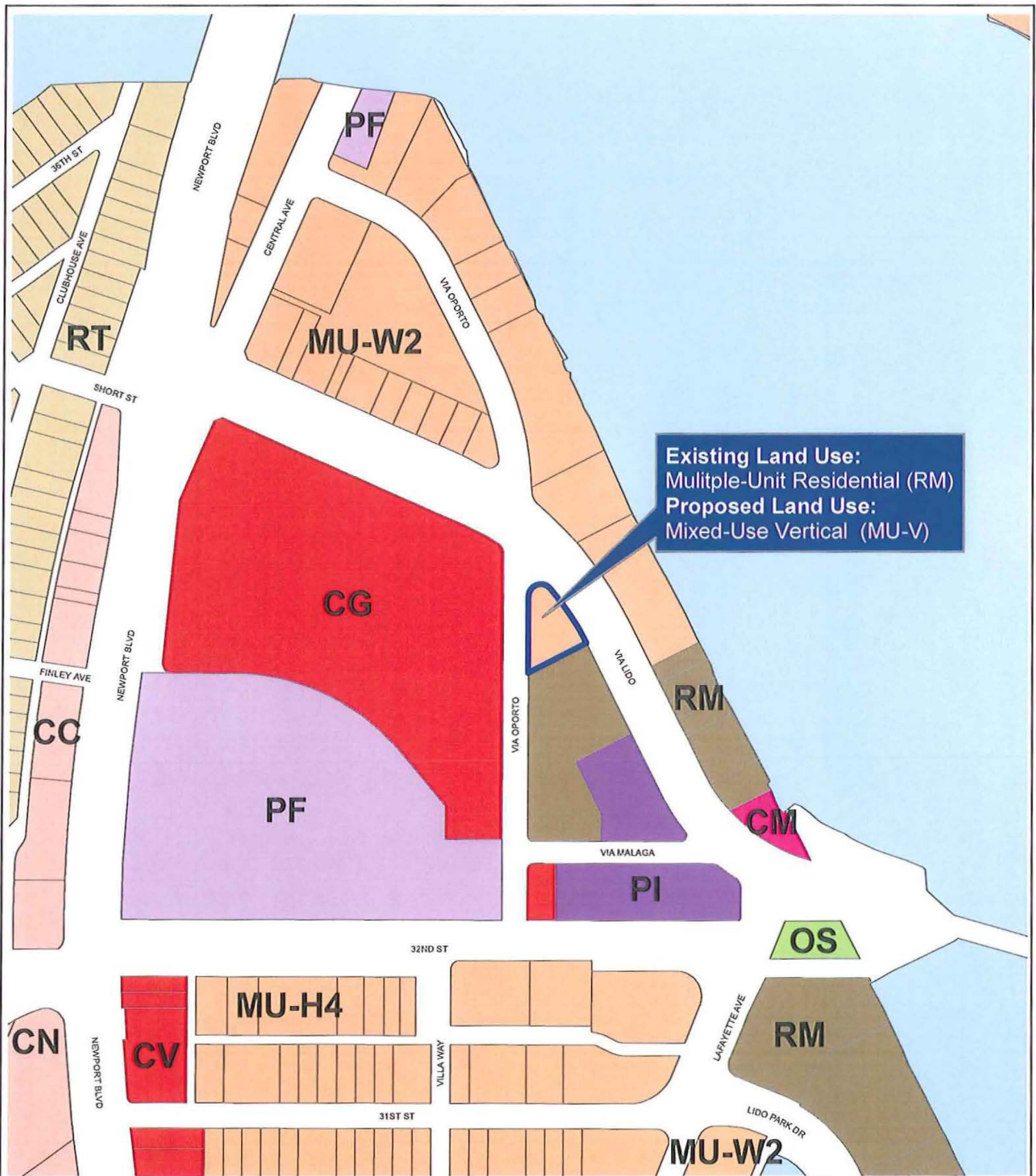
ABSENT:

BY: _____
Earl McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

Exhibit A

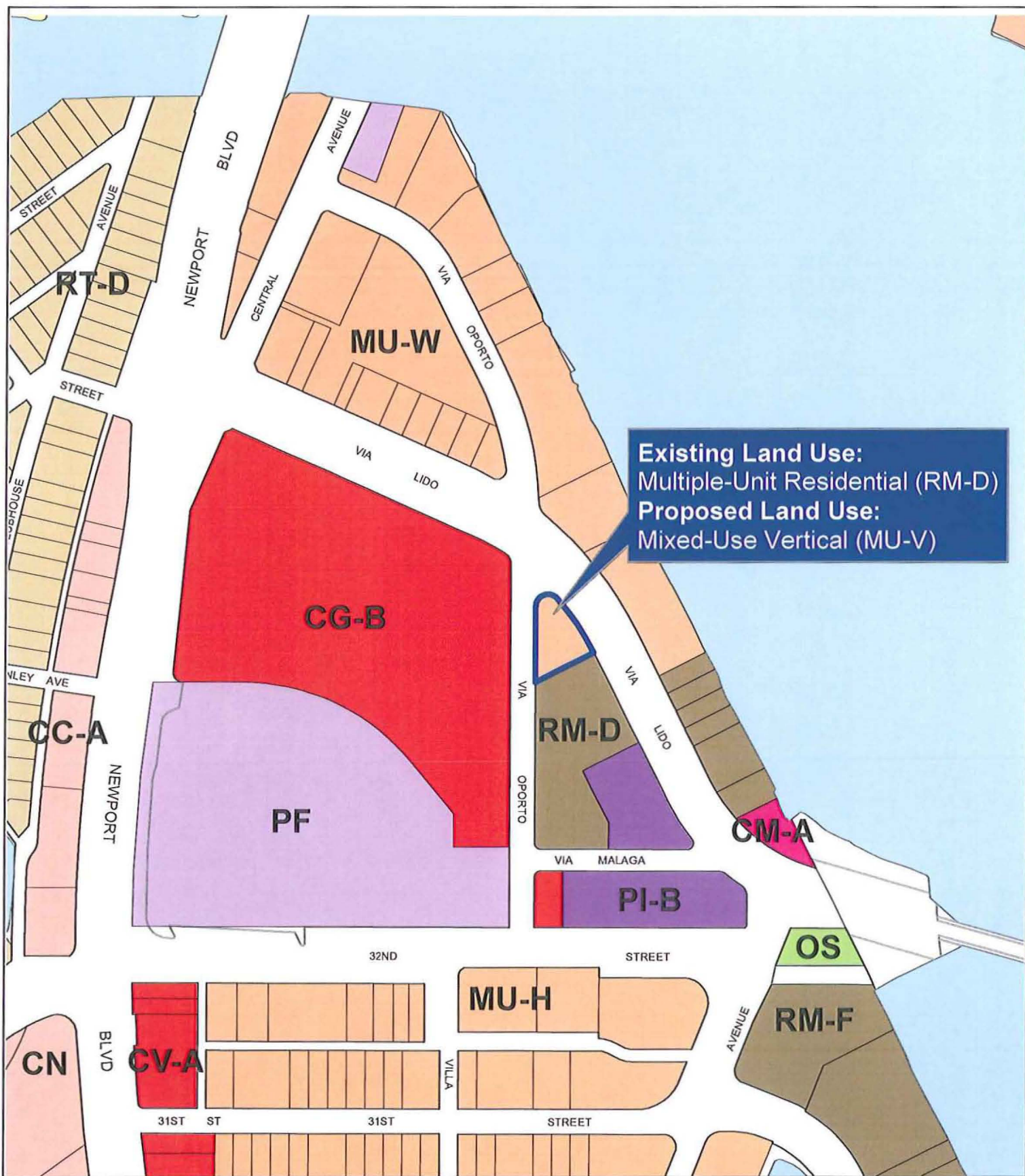
Existing and Proposed Land
Use Designations



GP2011-003 (PA2011-024)
General Plan Amendment
3363, 3369, and 3377 Via Lido
& 3378 Via Oporto

0 125 250 Feet





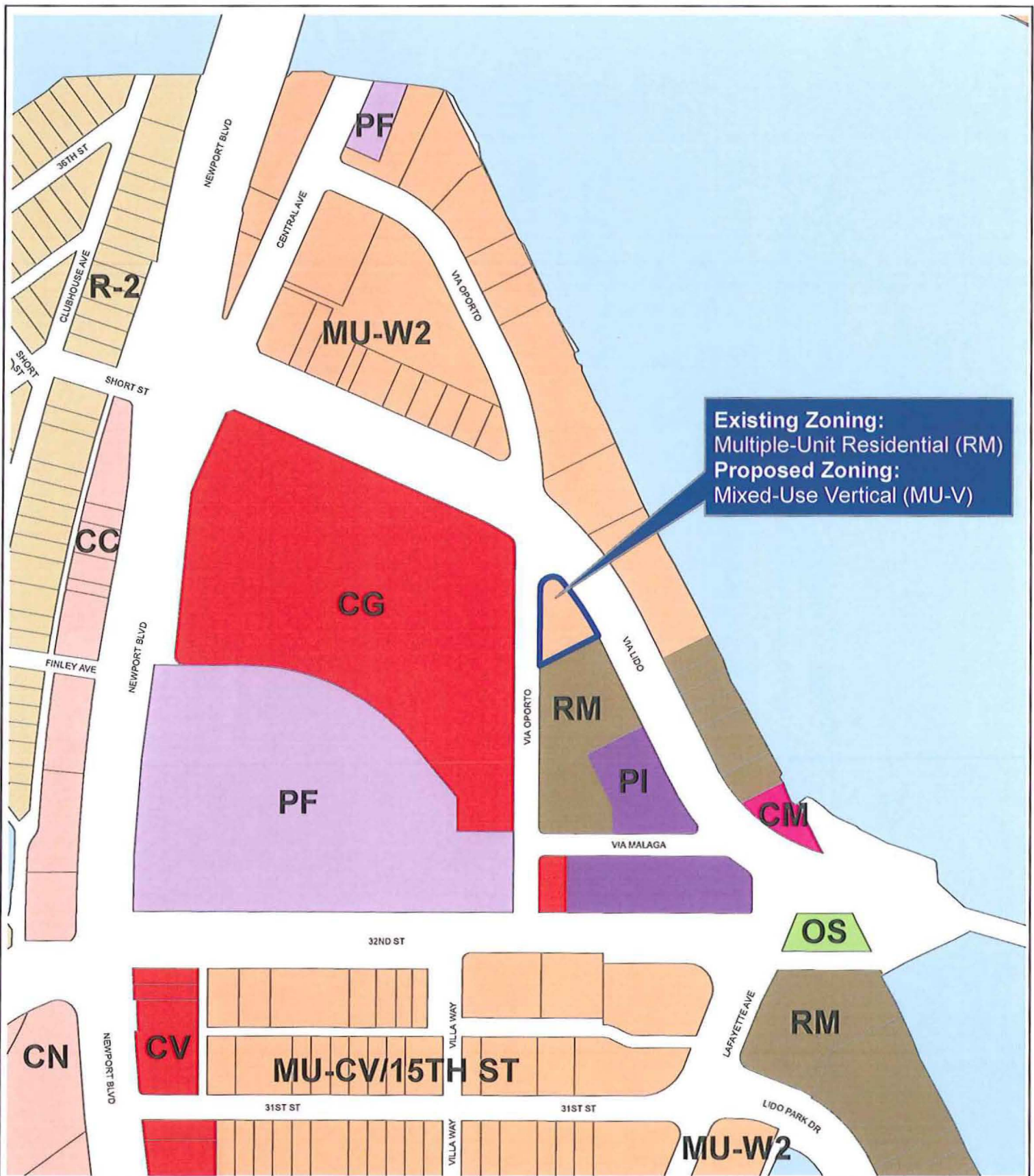
LC2011-002 (PA2011-024)
 Coastal Land Use Plan Amendment
 3363, 3369, and 3377 Via Lido
 & 3378 Via Oporto

0 125 250 Feet



NEWPORT
 Info
 NEWPORT COASTAL LAND USE DISTRICT





CA2011-005 (PA2011-024)
Zoning Code Amendment
 3363, 3369, and 3377 Via Lido
 & 3378 Via Oporto

0 125 250 Feet



NEWPORT
Info
 NEWPORT INFORMATION & BUSINESS

Attachment No. PC 2
Section 423 Analysis Table

04/26/2011

Page 1 of 1